SANJIV

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1504 OF 2006

The Lonavala Municipal Council, Lonavala. ....Petitioner.

Vs.

The Dukes Retreat Ltd. & Anr. .... Respondents.

Mr. Rakesh Saroj for the petitioner.

Mr. Milind Sathye with Ms. Soumya Srikrishna i/by Bachhubhai Munim & Co. for respondent 1.

Ms. F. R.Shaikh, APP for the State.

CORAM :- SMT. RANJANA DESAI, J.

DATE :- 18TH DECEMBER, 2006.

P. C.:-

1. The petitioner has challenged in this writ petition order dated 23/02/2006 passed by the Sessions Court, Pune in Criminal

Revision Petition No. 305 of 2005 filed by respondent 1.

2. The few facts may be necessary to understand for issues involved. The petitioner has issued a water bill on respondent 1 on 31/12/2003. Water bill amount was of Rs.1,86,15,000/-. Being aggrieved by this bill, respondent 1 filed Municipal Appeal No. 5/2003, before the Judicial Magistrate, First Class, Vadgaon, Pune . In the appeal, respondent 1 preferred an application for stay. The petitioners preferred an application that respondent 1 may be directed to deposit the bill amount in the court. On 28/01/2004 the learned Magistrate dismissed both the applications. Respondent 1 carried revision to the Sessions Court at Pune being criminal revision No. 154/2004. The said revision application was disposed of on 23/06/2004. Application of respondent 1 was allowed. The impugned order being ousted unconditionally, the petitioner filed an application in this court challenging the said order being criminal revision application 3025/2004 on 24/08/2004. The said application was disposed of by learned Single Judge of this Court. The learned single judge directed respondent 1 to deposit the amount of Rs.25 lacs in the court of Judicial Magistrate First Class within a period of 4

weeks from the date of the order. Liberty was granted to the petitioner to withdraw the said amount, and if the amount is not deposited the stay shall stand vacated.

3. The learned Magistrate was directed to dispose of the pending appeal as directed by the learned Sessions Judge within 4 weeks. Being aggrieved by this order, the petitioner filed special leave petition in the Supreme Court. In this leave petition the petitioner inter-alia contended that it is a mandatory upon respondent 1 to pay the petitioner Municipal Council the full amount included in the bill, as provided under Section 170(c) of the Maharashtra Municipal Council Nagar Panchayat and Industrial Townships Act 1965 (for short, “the said Act”) The said leave petition was dismissed on 10/12/2004. Thereafter the petitioner filed another application before the Judicial Magistrate First Class on 22/03/2005 again praying that as per Section 170(c) of the said Act respondent 1 may be directed to deposit the entire bill amount in the trial court. The said application was allowed by the Judicial Magistrate First Class, Vadgaon. Being aggrieved by the said order, respondent 1 filed revision application before the Sessions Court, Pune. The Sessions

Court by the impugned order dated 23/02/2006 allowed the revision application. The Sessions Court directed the trial court to expedite the hearing of Municipal appeal No. 5/2003. The Sessions Court inter-alia held that the special leave petition filed by the petitioner having been against the order of this Court directing to pay Rs.25 lacs in the court being dismissed. The said issue was finally concluded and therefore, consequent application making the same prayer is barred by resjudicata.

4. Heard the learned counsel appearing for the parties. In my opinion, in the impugned orders the view taken by the learned Sessions Judge is correct. There can be no dispute of the fact that the petitioners contention based on Section 170(c) of the said Act was raised by the petitioner in the revision. The supreme Court dismissed the special leave petition. Therefore, order passed by this court directing respondent 1 to deposit Rs.25 lacs has been reviewed at the time of final hearing. It cannot be reviewed now. Hence this writ petition is dismissed. The learned Magistrate is directed to hear and dispose of the pending appeal within a period of 6 months from the date of receipt of this order. I make it clear that, my observations

are prima facie observations and the trial court shall deal with the pending appeals independently and uninfluenced by the same.

(SMT. RANJANA DESAI, J.)